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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 12 2014**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

NON-PRECEDENT DECISION

Page 2

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director found that the petitioner had not established that “the beneficiary is one of that small percentage who have risen to the top of the field of endeavor, and whether the beneficiary has sustained acclaim,” and therefore, did not find the beneficiary to be “an individual of extraordinary ability.”

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the beneficiary’s basic eligibility requirements.

On appeal, the petitioner submits a brief and additional evidence. Although the petitioner asserts on appeal that “USCIS...goes out of its way to manufacture a basis for the decision to deny” and that “[t]he decision to deny is arbitrary and capricious and violates the Administrative Procedures Act (“APA”) at 5 U.S.C. § 706,” the record does not support such claims. Nevertheless, the remedy for such an alleged error is for the AAO to consider all the evidence on appeal. Upon review of the entire record, the AAO concurs with the director’s conclusion that the petitioner did not submit qualifying evidence under at least three of the regulatory categories of evidence. For the reasons discussed below, the AAO upholds the director’s ultimate conclusion that the petitioner has not established eligibility for the exclusive classification sought. The AAO conducts appellate review on a *de novo* basis. The AAO’s *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

NON-PRECEDENT DECISION

Page 3

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

NON-PRECEDENT DECISION

Page 4

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence on behalf of the beneficiary under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim “shall” include evidence of a one-time achievement or evidence of at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. Moreover, the regulation at 8 C.F.R. § 204.5(h)(4) provides “[i]f the above standards do not readily apply to the [petitioner’s] occupation, the petitioner may submit comparable evidence to establish the [petitioner’s] eligibility.” It is clear from the use of the word “shall” in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner’s burden to explain why the regulatory criteria are not readily applicable to his occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation as an actress cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, the petitioner asserts that she meets six of the ten criteria at the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

B. Translations

The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

(3) *Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

Although the petitioner submitted a single certification in response to the director’s request for evidence, it is unclear to which specific documents the certification pertains. Contrary to the

NON-PRECEDENT DECISION

Page 5

petitioner's assertions on appeal, the submission of a single translation certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). On appeal, the petitioner submitted a new certification which lists each document and has therefore overcome this issue.

C. Evidentiary Criteria²

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Regarding the evidence submitted under the criterion, the director concluded that without a "certified English translation[]" in accordance with 8 C.F.R. § 103.2(b)(3)[[]], USCIS is unable...to consider them as evidence of published material." As discussed above, on appeal, the petitioner submitted an acceptable certification. A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Accordingly, the petitioner meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. 2003). Contributions must be documented and rise to the level of original artistic-related contributions "of major significance in the field." Recognition of the petitioner's talent as an actress does not equate to contributions of major significance in the field. Furthermore, regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. See *Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6, 8 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

The petitioner asserts that published material in which she is featured, her appearances in leading roles, a high salary and commercial success are evidence under this criterion, in addition to the criteria at 8 C.F.R. § 204.5(h)(3)(iii), (viii), (ix) and (x). Evidence relating to, or even meeting, the published material, leading role, high salary and commercial success criteria is not presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

NON-PRECEDENT DECISION

Page 6

regulatory requirement that a petitioner meet at least three separate criteria. Therefore, such evidence will not be discussed further under this criterion, but will be addressed under the appropriate corresponding criteria.

The record contains a number of letters of recommendation filed with the initial petition and in response to the director's request for evidence. According to [REDACTED] a theater director and producer who has coached the petitioner as an actress, the petitioner "is definitely at the top of the soap opera acting field in Colombia, due to her extraordinary talent in acting." [REDACTED] a filmmaker who worked with the petitioner on two television series, writes that the petitioner "has made major contributions to the field of Spanish-language television serials, by playing the leading role in at least a dozen long-running television series." [REDACTED] who acted with the petitioner on a soap opera, states that the petitioner's "long and successful career so far in television acting" is a result "of her original and unique contributions to the television productions she has worked on." [REDACTED] a Colombian actor who worked with the petitioner on a television series, states that "it is very difficult to stay current because newer, younger actors are constantly rising up and quickly replacing the current actors," but that the petitioner "has risen to the top and remained there for several years" due to her "extraordinary talent and versatility."

The remaining letters, which are from individuals who have worked with the petitioner, praise her "versatility," "dedication and professional commitment," and "quality of work" and state that she has a "wonderful career" and is an "enormous talent." While the letters are very complimentary, the petitioner's colleagues and acquaintances fail to provide concrete examples of the petitioner's contributions and do not indicate that her contributions are of major significance.

The petitioner also submitted an advisory opinion letter from [REDACTED] President of [REDACTED] Inc., who "reviewed the accomplishments" of the petitioner. The letter states that the petitioner "is an extraordinary actress and entertainer at the top of her field of Spanish-language television serial acting." Mr. [REDACTED] does not indicate that he was aware of the petitioner prior to the request for an advisory opinion. Mr. [REDACTED]'s determination does not appear to be based on any prior knowledge of the petitioner or her work, but merely on the information given to him by the petitioner.

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942, at *5 (S.D.N.Y. 1997). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is

NON-PRECEDENT DECISION

Page 7

ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).³ Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence. *See also Visinscaia*, --- F. Supp. 2d ----, 2013 WL 6571822, at *8 (concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

In light of the above, the petitioner has not established that she meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases

The director concluded that the petitioner did not establish that "the display of her work in the field claimed under this criterion occurred at artistic exhibitions or at artistic showcases" and that "[i]n general, this criterion applies to the visual arts." On appeal, the petitioner asserts that the director's conclusions were "arbitrary and capricious" and that the petitioner's "work has been displayed at the very highest level" due to the airing of her series "on major networks and TV channels internationally." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." The petitioner is an actress. When she is performing in a television show, her work is not on display music in the same sense that a painter's or sculptor's work is on display in a gallery or museum. The petitioner is performing her work, she is not displaying her work. Contrary to the petitioner's assertions on appeal and in response to the director's request for evidence, the interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court and is not an abuse of discretion. *See Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or

³ In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

NON-PRECEDENT DECISION

Page 8

showcases, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

As stated by the director in his decision, "the petitioner must establish: First, that the organization enjoys a distinguished reputation and second, the nature of the beneficiary's role within the entire organization or establishment." The director concluded that the petitioner had not demonstrated how her performance in a television series "differentiated her from the other actors" or from the "organization's top executives" and how she "was responsible for the organization's overall success or standing to a degree consistent with the meaning of 'leading or critical role.'"

In the case of a leading role, the petitioner must demonstrate how the petitioner's role fits within the overall hierarchy of the organization or establishment. In the case of a critical role, the petitioner must have contributed to the success of the establishment or organization beyond merely providing necessary services. The petitioner must also demonstrate that the organizations or establishments have a distinguished reputation.

The petitioner asserts that she performed in a leading role for "at least 12 Spanish-language television series on major networks" and submitted letters from colleagues and articles which generally confirm that she played the protagonist in a number of television series, including the "lead role of [redacted] in [redacted] and the [redacted] in [redacted]. The petitioner did not, however, provide evidence to establish that any of the shows have a distinguished reputation. While not a recent article and, thus, not determinative, the record contains an August 2000 article in [redacted] stating that at least two of her shows did not enjoy high ratings. The record contains no independent ratings data documenting high ratings for any of her shows. Furthermore, the petitioner did not demonstrate how a television show, as opposed to a production company or television network for example, equates to an "organization" or "establishment," as required by the plain language of the regulation. Finally, the regulation at 8 C.F.R. § 204.5(g)(1) requires that evidence of experience "shall" consist of letters from employers. Therefore, letters written by anyone other than the petitioner's current and former employers can only supplement the required evidence for this criterion.

The petitioner also submitted contracts between herself and a number of production companies. A contract, however, only establishes the parameters of the relationship, but does not demonstrate that the petitioner performed in a leading or critical role.

Networks and production companies routinely rely on individuals like the petitioner to appear in television shows and other projects. While the letters and articles indicate that the petitioner has played an important role in a number of soap operas, the record does not contain any evidence beyond the assertions of colleagues to establish that her role was leading or critical to either the production company or the network's success or standing.

NON-PRECEDENT DECISION

Page 9

In light of the above, the petitioner has not established that she meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field

The record reflects that the petitioner does not command an annual salary; rather the petitioner is compensated in a number of different ways, such as per episode. The petitioner submitted evidence documenting past earnings and letters from colleagues which generally state she is highly paid.

The petitioner, however, must also submit documentary evidence of the earnings of those in her occupation performing similar work at the top level of the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). The AAO notes that in *Matter of Racine*, 1995 WL 153319 at *1, *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

The director's RFE listed a variety of types of evidence which could establish the earnings of those in her occupation performing similar work at the top level of the field. On appeal, the petitioner asserts that "statistical [salary] information for Colombian television serial actors appears not to exist," but does not provide any evidence to support such an assertion. The record contains a letter from [REDACTED] which states that the petitioner "has commanded a salary nearly 8 times th[e] amount" paid to "other television stars..., if they are in demand." While the record contains evidence regarding payments to the petitioner and letters from friends and colleagues which state that the actress is highly paid, the record does not contain any evidence, such as references to the salary of other highly paid actors in the media, regarding the pay scale of other "in demand" actors to support Ms. [REDACTED]'s, or anyone else's claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

NON-PRECEDENT DECISION

Page 10

The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where the petitioner demonstrates that secondary evidence is unavailable may the petitioner rely on affidavits. In the instant petition, the petitioner did not submit any documentary evidence demonstrating that neither primary evidence, nor secondary evidence, such as references to high salaries for actors in the media, exists and is available. Furthermore, the letters in the record are not affidavits as they were not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (9th Ed., West 2009). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746.

In light of the above, the petitioner has not established that she meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner asserts that she satisfies this criterion based upon letters which generally claim that the petitioner was responsible for the high ratings of television shows in which she appeared. According to an August 2000 article in [REDACTED] however, the petitioner's two series prior to the series [REDACTED] did not do well. The petitioner also states in her August 6, 2013 letter that she has "played leading and supporting roles in over 30 long-running television series." The letter from Ms. [REDACTED] which lists the petitioner's "highest earnings" for eight of those series only indicates that the beneficiary was paid for a total of one year for seven of the series and six months for the other. Although the petitioner submitted evidence to establish that she has appeared in numerous television series, the record does not contain any independent evidence, such as ratings data, which establishes that the series were highly rated and that the petitioner was responsible for those ratings. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The record also includes evidence of "an album being sold on iTunes and Amazon.com," but does not contain any evidence that the album is a commercial success. Furthermore, the petitioner listed her field of extraordinary ability as an actress, not a singer.

In light of the above, the petitioner has not established that she meets this criterion.

NON-PRECEDENT DECISION

Page 11

D. Summary

As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to demonstrate that she satisfies the antecedent regulatory requirement of three types of evidence.

III. CONCLUSION

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁴ Rather, the proper conclusion is that the petitioner failed to demonstrate that she has satisfied the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established her eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

⁴ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).